

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.) TUESDAY, THE 2ND DAY
JUSTICE KOEHNEN) OF MARCH 2021

THE TORONTO-DOMINION BANK

Applicant

- and -

**GLOBEWAYS CANADA INC., CANPULSE FOODS LTD. AND
GLOBAL GRAIN CANADA LTD.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Global Grain Canada Ltd. (the “**Debtor**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and ETG Commodities Manitoba Inc. (the “**Purchaser**”) dated February 5, 2021 and appended to the Fourth Report of the Receiver dated February 23, 2021 (the “**Fourth Report**”) in redacted form, and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario via teleconference due to the COVID-19 crisis.

ON READING the Motion Record of the Receiver, the Fourth Report, and the Confidential Supplemental Report to the Fourth Report of the Receiver dated February 23, 2021 and on hearing the submissions of counsel for the Receiver, counsel for The Toronto-Dominion Bank and Farm Credit Canada and all other parties listed on the Counsel Slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Dominique Michaud sworn February 23, 2021 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion herein, the Motion Record and the Fourth Report of the Receiver is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated November 19, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba), *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any Claims pursuant to *The Retail Sales Tax Act* (Manitoba); (iv) any Claims under *The Tax Administration and Miscellaneous Taxes Act* (Manitoba); and (v) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term

shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Morden Land Titles Office (“**MLTO**”) of a Transmission in the form prescribed by *The Real Property Act* (Manitoba) duly executed by the Purchaser, and accompanied by a true copy of this Order title to the real property identified in Schedule B hereto (the “**Real Property**”) shall vest in the Purchaser in fee simple, subject only to the permitted encumbrances, easements and restrictive covenants listed on Schedule D, and free and clear of all Claims, including, without limitation, the Claims listed in Schedule C hereto, and the District Registrar of the MLTO is hereby directed to issue title accordingly.

5. **THIS COURT ORDERS** that this Order shall be entered by the District Registrar notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall

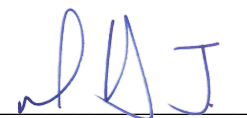
maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct or action other than in good faith pursuant to any applicable federal or provincial legislation.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00650857-00CL

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the “**Court**”) dated November 19, 2020, BDO Canada Limited was appointed as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Global Grain Canada Ltd. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated March 2, 2021 (the “**Vesting Order**”), the Court approved the agreement of purchase and sale made as of February 5, 2021 (the “**Sale Agreement**”) between the Receiver and ETG Commodities Manitoba Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets,

which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 7 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 7 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**BDO Canada Limited, in its capacity as
Receiver of the undertaking, property and
assets of Global Grain Canada Ltd., and not
in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Real Property Assets

Title No. 1549849/4

PARCEL 3 AND 4 PLAN 816 MLTO
IN THE NW 1/4 1-3-3 WPM
EXCEPTING THEREOUT FIRSTLY: ALL MINES AND MINERALS
SECONDLY: WATER CONTROL WORKS PLAN 1522 MLTO

Title No. 1549851/4

LOT 3 SS PLAN 492 MLTO
IN N 1/2 1-3-3 WPM
EXCEPTING THEREOUT – WATER CONTROL WORKS PLAN 1522 MLTO

Title No. 1549852/4

LOTS 2, 3 AND 4 BLOCK 1 PLAN 649 MLTO
IN THE NE 1/4 2-3-3 WPM

Title No. 2787979/4

LOT 1 PLAN 2257 MLTO
EXC ALL MINES AND MINERALS AS RESERVED
IN TRANSFER 181610 MLTO
IN NE 1/4 2-3-3 WPM

Schedule C – Claims to be deleted and expunged from title to Real Property

Mortgage No. 1222022/4 dated February 21, 2017 in favour of The Toronto-Dominion Bank

Mortgage No. 1254133/4 dated July 3, 2020 in favour of Farm Credit Canada

Postponement of Rights No. 1254134/4 dated July 3 2020 from The Toronto-Dominion Bank (in Mortgage No. 1222022/4) in favour of Mortgage No. 1254133/4

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

Caveat No. 38270/4 dated January 25, 1980 in favour of The Manitoba Telephone System

Caveat No. 83-2337/4 dated April 15, 1983 in favour of Manitoba Hydro

Caveat No. 85-7259/4 dated November 1, 1985 in favour of The Manitoba Telephone System

Caveat No. 1139356/4 dated August 12, 2009 in favour of MTS Allstream Inc.

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